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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG - 9 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
1994 Annual Access Tariff Filings) CC Docket No. 94-65
)

OPPOSITION OF BELL ATLANTIC¹

AT&T here seeks review of an issue that has been decided against it on three separate occasions: whether the conclusion of the amortization of equal access and network reconfiguration ("EANR") costs should be treated as an exogenous cost change.² AT&T can cite no relevant change in the law or the facts since the Commission first decided this issue three years ago to justify reconsidering that decision. Moreover, AT&T's argument that the conclusion of an endogenous cost should be treated as an exogenous event is wrong on the merits. As a result, there simply is no basis to grant AT&T's application.

¹ The Bell Atlantic telephone companies are Bell Atlantic Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic Virginia, Inc.; Bell Atlantic-Washington, Inc.; and Bell Atlantic West Virginia, Inc.

² Application for Review, 1994 Annual Access Tariff Filings (filed July 25, 1994) ("AT&T App. for Review").

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I. AT&T's Application Should Be Rejected As an Attempt to Relitigate Settled Issues

AT&T seeks to relitigate an issue that has already been decided against it by the Commission. As AT&T itself concedes, the Commission has repeatedly rejected arguments by local exchange carriers ("LECs") that the ongoing costs of converting to equal access are an exogenous cost.³ In addition, the very argument that AT&T makes here -- that completing the amortization of these endogenous costs should be treated as an exogenous cost change -- has been rejected on three separate occasions. In fact, this argument was first rejected by the Commission itself three years ago,⁴ and has been rejected twice since.⁵

Despite this long history, AT&T now asks the Commission to reverse itself and treat the expiration of these costs as exogenous. AT&T, however, can cite no relevant change in the facts or the law since the Commission first decided this issue three years ago. As a result, AT&T's application should be denied on the ground that it constitutes an attempt to relitigate settled issues.

³ Id. at 6-7.

⁴ *Policy and Rules Concerning Rates for Dominant Carriers*, 6 FCC Rcd 2637, n.77 (1991) ("Price Cap Recon. Order").

⁵ *Commission Requirements for Cost Support Material to Be Filed with 1994 Annual Access Tariffs and for Other Cost Support Material*, 9 FCC Rcd 1060 (Com. Car. Bur. 1994); *1994 Annual Access Tariff Filings*, CC Docket No. 94-65, Memorandum Opinion and Order Suspending Rates (rel. June 24, 1994) ("June 24 Order").

II. AT&T's Attempt to Classify the Expiration of Endogenous Costs as Exogenous Is Meritless

In addition to being an attempt to relitigate settled issues, AT&T's argument is substantively without merit.

First, AT&T argues that completing the amortization of EANR costs eliminates a key reason for treating these costs as endogenous.⁶ Specifically, AT&T claims that the Commission's concerns that EANR costs could not be quantified with sufficient precision to allow exogenous treatment does not apply once amortization is completed.⁷ But if the amount of costs incurred to reconfigure the network were not susceptible to precise measurement, the same is true of any attempt to measure the amount of costs that will no longer be incurred -- and thus of any downward adjustment to the price cap.

Second, stripped of its thin veneer, AT&T's argument boils down to the claim that the termination of an endogenous cost should be treated as an exogenous cost change -- despite the fact that the Commission consistently has ruled that no actual exogenous cost ever exists. But this result would violate the Commission's rules. The rules provide for exogenous treatment only for certain specified events and for other costs that the Commission determines to be exogenous.⁸ The conclusion of amortization, however, changes only what the Commission has determined to be an endogenous cost.

⁶ AT&T App. for Review at 8-9.

⁷ Id.

⁸ 47 C.F.R. § 61.45(d).

Nowhere do the Commission's rules provide for exogenous treatment for the expiration of costs that have been classified by the Commission as endogenous. To the contrary, the Commission has previously held that "the amortization of equal access costs is comparable to changes in depreciation levels that do not require an adjustment to the PCI when the equipment is fully depreciated."⁹

Finally, there is no possible justification for treating EARNR costs as endogenous for some purposes, but exogenous for others. As a result, should the Commission treat the expiration of amortization of EARNR costs as exogenous, then it also must permit Bell Atlantic (as well as other LECs) to recoup all of the costs that have been incurred to date as exogenous.¹⁰ The Commission treated those costs as endogenous based on its conclusion that (like equipment depreciation costs) they were within the control of the LECs.¹¹ A finding now that the completion of amortization --

⁹ See June 24 Order at 27, ¶ 55 (citing Price Cap Recon. Order, 6 FCC Rcd at 2667, n.77). AT&T simply ignores the Commission's finding that the amortization of equal access costs and the depreciation of equipment are comparable. Instead, AT&T claims -- incorrectly -- that the only reasons for the Commission's rejection of its expiration of amortization argument are (1) the difficulty of assessing equal access costs; and (2) the regulations. AT&T App. at 8-9.

¹⁰ By the same token, the ongoing costs that Bell Atlantic continues to incur also would have to be treated as exogenous, for example. Bell Atlantic continues to incur depreciation expense on equal access related investment. See Bell Atlantic ARMIS 43-04 Reports (filed March 31, 1994). At the Commission's direction, see Price Cap Recon. Order, 6 FCC Rcd 2665-66, ¶¶ 64-67, Bell Atlantic currently treats these costs as endogenous and subject to the price cap. But if the Commission here reverses itself and classifies past EARNR costs as exogenous, Bell Atlantic would be entitled to exogenous treatment of these ongoing costs as well.

¹¹ Price Cap. Recon. Order, 6 FCC Rcd at 2637, n.77.

an event also in the control of the LECs -- constitutes an exogenous cost change effectively would reverse the earlier finding.

AT&T, then, simply can find no support in the Commission's findings or in the regulations for its arguments.

IV. Conclusion

For the foregoing reasons, AT&T's application for review must be denied.

Respectfully submitted,

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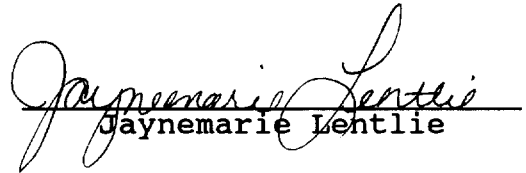

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Dated: August 9, 1994

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Opposition of Bell Atlantic" was served this 9th day of August, 1994, by first class mail, postage prepaid, on the parties on the attached list.


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